No. 93-1949

In The

Supreme Court of the United States

October Term, 1993

ROBERT L. DAVIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The
Court Of Military Appeals

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

When a suspect makes an ambiguous request for counsel during a custodial interrogation, must the interrogator cease questioning until the suspect is provided with counsel?

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INTEREST OF *AMICUS CURIAE*

The National Association of Criminal Defense Lawyers (NACDL) is a District of Columbia nonprofit corporation whose membership of more than 7,000 regular members and 25,000 affiliate members includes lawyers from every state. The NACDL is the only national bar organization working exclusively on behalf of public and private criminal defense lawyers and their clients. The American Bar Association recognizes the NACDL as an affiliated organization and awards it full representation in the ABA House of Delegates.

NACDL members are in daily contact with the criminal justice system, representing individuals in both the state and federal courts. In providing legal representation for those accused of crimes, NACDL seeks to secure the constitutional rights of all citizens and to preserve and

improve the American system of criminal justice. The *Amicus Curiae* Committee of the NACDL has discussed this case and decided that the issue presented is of such importance to citizens throughout the nation who will in the future be confronted with police interrogation that the NACDL should offer its assistance to the Court.

NACDL members represent both male and female clients of every race, ethnic group, and social class. Many of our clients belong to groups whose members ordinarily express themselves using speech patterns that vary from those of "standard" English usage. These clients are less likely to use direct, assertive language in their interactions with the police, so that their attempts to invoke their constitutional rights could appear to be ambiguous or equivocal. Because the Court's decision in this case will determine the degree of constitutional protection to be accorded to these clients' attempts to invoke their constitutional rights during interrogation, we seek to be heard on their behalf. Consent has been given by both parties to the filing of this *amicus curiae* brief, and letters confirming this consent have been lodged with the Clerk of this Court.

SUMMARY OF ARGUMENT

This Court has long held that individuals in police custody undergoing interrogation have the right under the Fifth Amendment to consult with legal counsel. To effectuate this right, *Edwards v. Arizona* holds that police interrogation must cease once a suspect has invoked his right to counsel. When, however, the individual's invocation of that right is in some way ambiguous or equivocal, the question becomes whether such an invocation triggers the *Edwards* bar on further police interrogation. *Amicus* urges this Court to hold that all cognizable requests for counsel satisfy the *Edwards* rule because alternates to such a rule provide lesser constitutional protection to those who happen to frame their requests

for counsel in indirect and hedged ways, while providing enhanced constitutional protection to those who fortuitously express their wishes using direct and assertive language. The arbitrary unfairness of this result is compounded by the fact that certain discrete groups within the population – particularly women and members of certain ethnic groups – disproportionately adopt speech patterns that include indirect and hedged linguistic characteristics. Adopting a per se rule that all cognizable requests for counsel are given full legal effect, on the other hand, would provide equivalent constitutional protection to all citizens, regardless of the speech patterns they happen to use in invoking their constitutional rights.

ARGUMENT

I. *Miranda v. Arizona* and *Edwards v. Arizona* Establish the Constitutional Framework for the Exercise by Suspects of their Fifth Amendment Rights during Police Interrogation.

The right of an individual to be free from compelled self-incrimination is a fundamental attribute of our adversarial criminal justice system. This right, enshrined in the Fifth Amendment to the United States Constitution, operates to protect the individual from certain police tactics during custodial interrogation. For the past quarter century, *Miranda v. Arizona*, 384 U.S. 436 (1966), has provided the doctrinal framework for the effectuation of the Fifth Amendment right against compulsory self-incrimination in the context of custodial police interrogation, requiring prescribed warnings informing suspects of their rights. *Id.* at 444-45. In an attempt to "dispel the compulsion inherent in custodial surroundings," the *Miranda* court held that the Fifth Amendment required the police to specifically inform suspects in custody of their constitutional rights and obtain waivers of those rights before any police interrogation could take place. *Id.* at 458, 444-45. Suspects must be informed both of their right

to remain silent in the face of police questioning and also of their right to consult legal counsel, retained or appointed, during interrogation. *Id.* at 444-45, 468, 471, 478-79.

The ability of persons undergoing police interrogation to interpose the presence of legal counsel was intended by the *Miranda* Court to reduce the psychological pressure on them created by common interrogation practices.[1] Therefore, the Court held that the Fifth Amendment guarantees individuals the right to have the assistance of counsel while being questioned in police custody. *Id.* at 470-73.

Once an interrogated suspect has affirmatively invoked the right against self-incrimination under the Fifth Amendment, *Miranda* holds that further police questioning is severely constrained. 384 U.S. at 444-45. Fifteen years after *Miranda*, this Court, in *Edwards v. Arizona*, 451 U.S. 477 (1981), re-affirmed *Miranda* and explicitly announced a bright-line rule cutting off further police questioning upon assertion of the right to counsel. In *Edwards*, this Court made it clear that, once the Fifth Amendment right to counsel during interrogation is invoked, questioning must cease unless counsel has been provided or the suspect himself initiates the resumption of the exchange. *Id.* at 484-85. Post-*Edwards* cases decided by this Court have continued to enforce this bright-line rule prohibiting police-initiated interrogation following invocation of the right to counsel. *See, e.g., Arizona v.*

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[1] *Miranda*, 384 U.S. at 449, 470. The *Miranda* opinion describes in considerable detail methods of police interrogation recommended in police procedural manuals. Recent editions of such manuals show that police tactics and techniques in interrogation have changed little in the past twenty five years. *See, e.g.*, John M. Macdonald & David L. Michaud, *Interrogation and Criminal Profiles for Police Officers* (1987); Fred E. Inbau, John E. Reid & Joseph P. Buckley, *Criminal Interrogation and Confessions* (3rd. ed. 1986).

Roberson, 486 U.S. 675, 682-88 (1988) (questioning by officer unaware of earlier invocation of the right to counsel in interrogation about an unrelated crime barred by *Edwards*); *Minnick v. Mississippi*, 494 U.S. 146 (1990) (*Edwards* violated by questioning a suspect, who had earlier invoked his right to counsel, outside the presence of counsel even though the suspect had had the opportunity to consult counsel since the time of his earlier invocation).

II. Lower Federal and State Courts Have Applied Three Differing Standards in Assessing Whether a Suspect's Attempt to Invoke the Right to Counsel will Trigger the *Edwards* Rule.

Before the *Edwards* rule can operate to bar subsequent police interrogation, the suspect must say or do something to invoke the Fifth Amendment right to counsel. If an individual invokes this right using direct, clear and emphatic language, this Court's opinions unmistakably mandate that further interrogation must cease. If, however, the suspect's request for counsel is not framed in direct, clear, and emphatic language, there is currently no Supreme Court precedent requiring such invocations to be given legal effect. In the absence of Supreme Court caselaw directly on point, some state and lower federal courts have evaded the *Edwards* rule by holding that indirect or ambiguous invocations of the right to counsel do not serve to bar subsequent police questioning.

The question before this Court is, what standard should courts apply in determining whether a suspect has invoked the right to counsel? Should a suspect's words requesting counsel be liberally construed as an assertion of the right to counsel? Or should a reviewing court require unambiguous clarity and directness in the language used by a suspect in police custody before a request for legal assistance will be considered an effective invocation of the right to counsel?

State and lower federal courts have taken three different approaches to the question of the legal consequences of an apparently ambiguous or equivocal invocation of the right to counsel by a suspect. Under the so-called "threshold-of-clarity" standard, an attempted invocation of the right to counsel must be direct and unambiguous before it will be considered effective. Under the "clarification" standard, an ambiguous or equivocal invocation of the right to counsel permits the police to continue the exchange in order to clarify the suspect's intent before proceeding with further general questioning. The third approach, the "per se" standard, treats any post-warning reference by a suspect to his or her desire for counsel as an effective invocation of the right to counsel, barring further police-initiated questioning.

III. This Court Should Hold that Any Attempted Invocation of the Right to Counsel by an Arrestee is Sufficient to Bar Subsequent Police Interrogation, Because Only this Rule will Ensure that Constitutional Guarantees are Equally Available to All Citizens.

A. People who express themselves using indirect and non-assertive speech patterns should not thereby be penalized when they attempt to invoke their right to counsel.

If this Court were to adopt a rule that requires unambiguous clarity in invocations of counsel, then only those who frame their requests for counsel in direct and unqualified language would receive the assistance of the *Edwards* rule in exercising their constitutional rights. Not all people do express themselves using direct and unqualified language, however; yet under the threshold of clarity and clarification standards, such individuals receive lesser constitutional protection than those who fortuitously use unambiguous assertive language in invoking their rights.

The degree of constitutional protection accorded to suspects should not differ based upon the way in which they happen to express their requests for counsel. But the vice of such a doctrine goes beyond its arbitrary refusal to give constitutional protection to some individuals while giving other similarly situated persons the full benefit of the *Edwards* rule, because the burdens of a rule favoring direct and assertive language tend to fall disproportionately on certain identifiable groups within our population. Sociolinguistic research demonstrates that certain discrete segments of the population – women and many minority ethnic groups – are far more likely than other groups to adopt indirect and hedged speech patterns. This Court should not adopt a rule that penalizes individuals who tend to use an indirect mode of expression, particularly when indirect speech patterns are characteristic of members of certain groups that have historically been disadvantaged.

B. Women and members of certain ethnic groups frequently use indirect or hedged speech patterns that will make their attempts to invoke their constitutional rights appear to be equivocal.

Linguistics researchers have found that some people habitually speak in a distinctive register of English characterized by frequent use of vocabulary and grammatical features that makes these speakers appear to be hesitant or equivocal about what they are saying. Speakers who adopt this register often use hedges in their speech, such as beginning a statement with qualifying language such as "I think," or "maybe," or "I suppose".[2] Such speakers might invoke the right to counsel by saying "I think I'd better talk to a lawyer," or "Maybe I should see a lawyer,"

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[2] *See* Janet E. Ainsworth, *In a Different Register: The Pragmatics of Powerlessness in Police Interrogation*, 103 Yale L.J. 259, 276-77 (1993).

or "I guess I should speak with a lawyer." They likewise tend to avoid using imperatives, and in place instead substitute indirect questions. For example, rather than invoking the right to counsel by using the direct imperative, "Call me a lawyer," a person using this register might ask the question, "Would you mind calling me a lawyer?"[3] Other characteristics of this register include the use of tag questions, where direct statements are turned into questions posed to the other party to the speech,[4] and the use of rising intonation – ordinarily used to signal that a question is being asked – in making declarative statements.[5] Collectively, the grammatical features of this speech register create in the listener an impression of uncertainty or equivocality on the part of the speaker because the speaker eschews strong, assertive modes of expression in favor of softer, more indirect, and tentative-sounding turns of phrase.

This register, first observed by researchers studying the contrasting patterns of language use by men and women, is sometimes called "women's language" or the "female register" in recognition of the fact that it is a mode of expression that women disproportionately adopt as compared to men.[6] Further, subsequent research has

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[3] *See* Ainsworth, *supra* note 2, at 281.

[4] An example of a tag question is, "I should get a lawyer, shouldn't I?" For further discussion of the syntax and meaning of tag questions, see Ainsworth, *supra* note 2, at 277-79.

[5] Ainsworth, *supra* note 2, at 282; *see also* Sally McConnell-Ginet, *Intonation in a Man's World*, 3 Signs 541-59 (1978). This tendency to use a rising intonation at the end of declarative statements is particularly noticeable among younger women.

[6] Robin Lakoff conducted the pioneering research in this field, with extensive follow-up work carried out by many other sociolinguists. *See, e.g.*, Robin T. Lakoff, *Language and Women's Place* (1975). For a discussion of the body of sociolinguistic research demonstrating that this hedging register is used more frequently by women than by men, see Ainsworth, *supra* note 2, at 271-75.

determined that, although the use of this register is gender-linked, gender differences in language use are magnified in certain contexts. This register is especially likely to be adopted by women in contexts where there is a power disparity between the speaker and the person to whom the speech is addressed.[7]

In fact, the correlation between powerlessness and the use of this "female register" has proven to be even more pronounced than is the correlation between gender and the use of this register.[8] For example, one study examined many hours of courtroom transcripts to see whether witnesses used this "female register," and if so, under what circumstances they tended to adopt it. Female witnesses used this mode of expression more often than did male witnesses; however, the social status of the witness turned out to be a better predictor of the use of this "female register" than was gender alone.[9] Males who held low-status jobs or who were unemployed used more of the characteristic hedging features of the "female register" than did males or females of higher social status.[10] The researchers conducting this study concluded that it is more appropriate to call this linguistic register, distinguished by the predominance of hedged and indirect speech forms, "powerless language" rather

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[7] See Ainsworth, *supra* note 2, at 283-86.

[8] William O'Barr, *Linguistic Evidence: Language, Power, and Strategy in the Courtroom* (1982); Bonnie Erickson, E. Allan Lind, Bruce C. Johnson & William O'Barr, *Speech Style and Impression Formation in a Court Setting*, 14 J. of Experimental Soc. Psych. 266-79 (1978); E. Allan Lind & William O'Barr, *The Social Significance of Speech in the Courtroom*, in *Language and Social Psychology* 145-57 (Howard Giles & Robert N. St Clair eds., 1979); Bowman K. Atkins & William M. O'Barr, *"Women's Language" or "Powerless Language"?* in *Women and Language in Literature and Society*, 93-110 (Sally McConnell-Ginet, Ruth Borker & Nelly Furman eds. 1980).

[9] O'Barr, *supra* note 8, at 61-65.

[10] *Id.* at 69.

than "women's language."[11] Those who are, or perceive themselves to be, relatively powerless in a particular situation will be more likely to use this hedging mode of expression because they will be uncomfortable about imposing demands directly upon the persons with whom they are speaking. Those in a subordinate position – for example, low ranking military personnel – would therefore be likely to use this speech register to avoid the presumptuousness of making a direct demand upon higher ranking officers or other authority figures.

Once researchers had identified this "female register," they found many other social groups that disproportionately used a similar indirect and hedged speech register. Many ethnic speech communities within the United States were found whose members, like women using the "female register", avoided the direct, assertive, unqualified speaking style of so-called "standard" English. For example, linguistic researchers observed that indirect speech patterns are common within African-American spoken language.[12] In addition, members of many other ethnic groups, whose native tongues include languages such as Arabic, Farsi, Yiddish, Japanese, Indonesian, and Greek, use indirect and hedged speech patterns far more frequently than do speakers of standard English.[13] Moreover, speakers of these languages tend to incorporate these indirect speech patterns into their

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[11] *Id.* at 65-71.

[12] Thurmon Garner, *Cooperative Communication Strategies: Observations in a Black Community*, 14 J. Black Stud. 233, 234-48 (1983). *See also*, Geneva Smitherman, *Talkin' and Testifyin': The Language of Black America* 97-100 (1977) (discussing the use of indirect language in vernacular Black English).

[13] A preference for indirect speech patterns occurs among a wide variety of unrelated languages. Muriel Saville-Troike, *The Ethnography of Communication* 14, 35 (2d ed. 1989); Deborah Tannen, *Ethnic Style in Male-Female Conversation*, in *Language and Social Identity* 223-30 (John J. Gumperz ed. 1982).

English usage, retaining the preferred modes of expression from their native languages even when they switch into English.[14] In fact, there is evidence that ethnic communities may perpetuate their indirect speech conventions over generations, and that even third and fourth generation members who speak only English may continue to use these typically ethnic speech patterns in their native English.[15] If this Court adopted a rule that required clear and unambiguous invocation of the right to counsel, however, speakers from such an ethnic group whose speech conventions militate against making direct assertions would find that their invocations of the constitutionally-guaranteed right to counsel were given no legal effect.

C. The police interrogation context is likely to accentuate the tendency that an individual will use indirect or hedged language in responding to police questioning.

Gender, ethnicity, and socioeconomic class are not the only factors affecting the likelihood that a speaker will use an indirect and hedging speech register. Even within speech communities whose members do not ordinarily use indirect modes of expression, individual speakers who are situationally powerless tend to adopt a hedging speech register. Research indicates that, in circumstances in which people are comparatively powerless, the prevalence of "female register" features in their speech is

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[14] John J. Gumperz & Jenny Cook-Gumperz, *Introduction: Language and the Communication of Social Identity*, in *Language and Social Identity* 1, 6 (John J. Gumperz ed. 1982); Saville-Troike, *supra* note 13, at 35.

[15] In a study of speech patterns across three generations of Greek-Americans, Deborah Tannen concluded that Greek Americans, even those who spoke no Greek, persistently used more indirect speech patterns than those found in standard English. Deborah Tannen, *supra* note 13, at 223-30.

higher than it would normally be.[16] The police interrogation setting by its very nature involves an imbalance of power between the suspect and the interrogator, thus increasing the likelihood that a particular suspect will adopt an indirect, and thus equivocal sounding, mode of expression.

The typical police interrogation of an arrested suspect has a number of characteristics that mutually act to reinforce the questioned suspect's perception of powerlessness.[17] First, the interrogation is conducted as a one-sided exchange in which the interrogating officer asks the questions and the suspect is expected to provide the answers. The interrogating officer controls the subject matter, tempo, and progress of the questioning, reserving the right to interrupt responses to questions and to judge whether the responses are satisfactory. The person questioned, on the other hand, cannot question the interrogator, or even question the propriety of the questions put to him by the interrogator. Police procedural manuals recommend that the interrogating officer consciously manipulate every aspect of the interaction in order to enhance the perceived power of the interrogator and minimize the sense of power and independence of the suspect.[18] The

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[16] Empirical research on the "female register" suggests that the higher the imbalance of power in the communicative relationship, the higher the incidence of indirect language by the less powerful speaker. Janet Holmes, *'Women's Language': A Functional Approach*, 24 General Linguistics 149, 157 (1984) (summarizing the research on the correlation of powerlessness and the use of female register).

[17] *See* D. R. Watson, *Some Features of the Elicitation of Confessions in Murder Interrogations*, in *Interaction Competence* 263, 272-79 (George Psatha ed., 1990); Norman Fairclough, *Language and Power* 18 (1989) (discussing police interrogation as exemplification of a context involving one-sided control of the communicative exchange).

[18] *See, e.g.*, John M. Macdonald & David L. Michaud, *Interrogation and Criminal Profiles for Police Officers* 33-35 (1987); Fred

explicit aim of the interrogator is to conduct the questioning in such a way as to increase the anxiety felt by the suspect, who will then be more vulnerable to police interrogation tactics.[19] For example, the interrogating officer ideally maintains complete control over the physical environment in which the questioning takes place, making sure that the suspect remains isolated in unfamiliar surroundings designed to keep him psychologically off balance.[20] It is the interrogator who decides how long the interrogation session will last, with prolongation of the session intentionally exploited as a tactic with which to achieve an advantage over the suspect.[21] Similarly, the interrogator unilaterally determines the subject matter of the interrogation and the manner in which the questions are asked, taking full advantage of a wide variety of tactics designed to control the interrogation and overcome the suspect's resistance,[22] including accusatory confrontation of the suspect,[23] trickery and deception,[24] baiting questions designed to insult or humiliate,[25] and appeals to the suspect's religious values.[26] Even the suspect's ability to answer questions is constrained by the interrogator, who is advised to repeatedly interrupt denials and attempts to explain by the suspect in order to condition the suspect to accept complete domination by

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E. Inbau, John E. Reid & Joseph P. Buckley, *Criminal Interrogation and Confessions* 24-42 (3rd. ed. 1986).

[19] Inbau, Reid, & Buckley, *supra* note 18, at 342-45.

[20] *Id.* at 24-28.

[21] *Id.* at 310 (suggesting sessions of up to four hours in length to break a suspect's will to resist confessing).

[22] *See generally*, Macdonald & Michaud, *supra* note 18, at 26-47 (1987); Inbau, Reid & Buckley, *supra* note 18, at 77-208.

[23] Inbau, Reid & Buckley, *supra* note 18, at 84-93.

[24] *Id.* at 216-19, 319-23.

[25] *Id.* at 68-72.

[26] *Id.* at 164.

the interrogating officer.[27] In short, the interrogating officer aims to exercise total control over every aspect of the interrogation session.[28]

When these routine police practices are combined with the actual physical power that the police have over the arrested individual in custody, that person's perception of powerlessness is dramatically greater than that felt in daily life. This sense of powerlessness created in the specific context of the police interrogation increases the likelihood that hedged "female register" modes of expression will be used by the suspect during custodial interrogation.[29]

Given these factors that determine whether a particular individual will express himself using direct and assertive language or indirect and ambiguous language, it misses the point to ask whether a particular utterance is "really" equivocal or only just "apparently" equivocal, since the adoption of an indirect register, whether consciously or unconsciously, is a response to the contextual powerlessness of the utterer. In a recent study of equivocal language use, several researchers concluded that it is misleading to assume that individuals freely choose to express themselves in an equivocal manner. Rather, equivocation should be seen as the product of the social context in which speakers find themselves, in which direct and assertive statements are perceived as leading to negative consequences for the speakers.[30] This analysis

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[27] *Id.* at 141-53.

[28] Macdonald & Michaud, *supra* note 18, at 33.

[29] *Cf.* O'Barr, *supra* note 8, at 64-71 (noting that powerlessness correlated with the extent to which witnesses in court displayed "female register" characteristics in their speech).

[30] Janet Beavin Bavelas, Alex Black, Nicole Chovil & Jennifer Mullett, *Equivocal Communication* 54 (1990):

> [A]lthough an individual equivocates, he or she is not the cause of equivocation. Rather, equivocation is the result of the individual's communicative situation. Equivocation is avoidance; it is the response chosen when all other communicative choices in the situation would lead to negative consequences.

Id. at 54.

suggests that powerless people, who most often perceive themselves to be in such "no-win" situations, would tend to adopt more equivocal speech patterns. Therefore, the use by an individual of an indirect mode of expression in invoking the right to counsel is not a dependable indication that the individual is truly ambivalent about the right, but is likely to be a product of a context in which a bald demand for counsel is seen as an inappropriate response given the power disparity between the interrogator and the suspect.

IV. A Bright Line Rule Requiring the Police to Respect All Apparent Invocations of the Right to Counsel is Superior to the Other Two Standards in Guaranteeing Equivalent Legal Protection to All Individuals in Exercising Their Constitutional Right to Counsel.

This Court should adopt the per se standard that triggers the *Edwards* rule whenever a suspect apparently requests counsel because such a rule gives the same degree of constitutional protection to all suspects regardless of the modes of expressions that they may employ in invoking their right to counsel. The experience of lower federal and state courts in applying the other two standards, the threshold-of-clarity and the clarification standards, demonstrates the inadequacy of those standards to assure that all individuals receive equality of treatment under the law for the protection of their fundamental constitutional rights.

A. The threshold-of-clarity standard fails to protect the constitutional rights of the many individuals using indirect speech patterns, since under that standard, only direct and assertive invocations receive any constitutional protection.

Courts adopting the threshold-of-clarity standard, while paying lip service to the language of *Miranda* that the right to counsel can be invoked by a suspect "in any manner",[31] have in practice required that an assertion of the right to counsel be direct and absolutely unambiguous before according it any legal effect.[32] A frequently-cited Illinois case demonstrates the inadequacy of the threshold-of-clarity standard. In *People v. Krueger*, 412 N.E.2d 537 (Ill. 1980), police were questioning a suspect in custody about several burglaries. In the course of the interrogation, the interrogating officers began to ask the suspect about a stabbing death. At that point, the suspect said, "Wait a minute. Maybe I ought to have an attorney. You guys are trying to pin a murder rap on me, give me 20 to 40 years." *Id.* at 538. The officers did not provide a lawyer to the suspect, and continued their interrogation of him. *Id.* at 538-39. The Illinois Supreme Court held that the use by the defendant of the hedge "maybe", even in the context of his exclamation that the

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[31] "If . . . [the suspect] indicates *in any manner* and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning." *Miranda*, 384 U.S. at 444-45 (emphasis added).

[32] Courts adhering to the threshold-of-clarity rule have required that a suspect's words be "unequivocal", *People v. Lattanzio*, 549 N.Y.S.2d 179, 181 (1989); "clear and unambiguous", *People v. Bestelmeyer*, 212 Cal. Rptr. 605, 607, 609 (Ct. App. 1985); "clear and unequivocal", *Bane v. State*, 587 N.E.2d 97, 103 (Ind. 1992); "unambiguous and unequivocal", *Bunch v. Commonwealth*, 304 S.E.2d 271, 276, *cert. denied*, 464 U.S. 977 (1983); and "without qualification", *Daniel v. State*, 644 P.2d 172, 178 (Wyo. 1982).

police were trying to pin a murder rap on him, deprived him of the constitutional protection of the *Edwards* rule which otherwise would have prevented the police from continuing to question him without a lawyer. In jurisdictions that adhere to the threshold-of-clarity rule, there are many similar cases in which suspects who used hedging language such as "maybe,"[33] "I think",[34] "I feel like,"[35] "I'd like to,"[36] or "I wonder"[37] in their invocations were

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[33] *State v. Campbell*, 367 N.W.2d 454, 458 (Minn. 1985) (suspect's statement "If I'm going to be charged with murder, maybe I should talk to an attorney" not a valid invocation of her right to counsel); *State v. Moore*, 744 S.W.2d 479, 480 (Mo. App. 1988) (suspect's statement that "maybe he needed counsel" did not adequately invoke right to counsel).

[34] *People v. Lattanzio*, 549 N.Y.S.2d 179, 181 (1989) (suspect who said "that he thought, he believed that he wanted a lawyer, that he needed time to think about it" had not invoked his right to counsel); *People v. Kendricks*, 459 N.E.2d 1137, 1140-41 (Ill. 1984) (suspect who said to police, "You know, I kind of think I know [sic] a lawyer, don't I?" or "I think I might need a lawyer," had not effectively invoked the right to counsel); *People v. Bestelmeyer*, 212 Cal. Rptr. 605, 607, 609 (Ct. App. 1985) (suspect who said, "I just thinkin', maybe I shouldn't say anything without a lawyer and then I thinkin' ahh," did not validly invoke right to counsel).

[35] *Bunch v. Commonwealth*, 304 S.E.2d 271, 275-6 (Va.), *cert. denied*, 464 U.S. 977 (1983) (suspect who said he "felt like he might want to talk to a lawyer" did not invoke his right to counsel).

[36] *Bane v. State*, 587 N.E.2d 97, 103-04 (Ind. 1992) (Off: "[I]t's my understanding you don't want to sign the rights form now is that right?" Defendant: "Not 'til you know?" Off: "O.K." D: "When I talk to my lawyer I'll . . . " Off: "O.K. But you don't want a lawyer at this time, is that correct?" D: "I will get a lawyer." Off: "O.K. But you don't want one now is what I'm saying. O.K.?" D: "*I'd like to have one* but you know I it would be hard to get ahold of one right now." Off: "Well what I am asking you Clayton is do you wish to give me a statement at this time without having a lawyer present?" D: "Well I can I can tell you

held to have failed to assert their right to counsel adequately.

The threshold-of-clarity standard also ignores the significance of normal inferences that speakers expect listeners to make in interpreting their words. For instance, in *People v. Harper*, 418 N.E.2d 894 (Ill. 1981), after receiving *Miranda* warnings, the suspect told police that he had a lawyer, and asked the interrogating officer to get the wallet containing his lawyer's business card from his car. The officer responded that this wouldn't be necessary, and continued the interrogation. *Id.* at 896. Applying the threshold-of-clarity standard, the New York appellate court found that the words of the suspect were only an "equivocal", and hence ineffective, assertion of the right to counsel, since the suspect never clearly said that the reason he wanted the officer to retrieve the business card was that he desired to seek the assistance of counsel during the interrogation.[38] In the context of a suspect having just been read his *Miranda* rights, however, it is obvious that the suspect intended to assert his right to counsel by asking the officer to give him the card printed with his lawyer's phone number. His request for the lawyer's card can have no other relevance under the circumstances. Similarly, the words of a suspect who asks the interrogating officer to recommend a good lawyer,[39]

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what I did." Off: "O.K. that's what, that's what I'm asking." Held, too equivocal to be a valid invocation); *Daniel v. State*, 644 P.2d 172, 177 (Wyo. 1982) (suspect's statement that he would "probably like to have an attorney present" was not a valid invocation of the right to counsel).

[37] *State v. Moorman*, 744 P.2d 679, 685-86 (Ariz. 1987) ("I wonder if I need an attorney," did not invoke right to counsel).

[38] *Id.*

[39] *State v. Linden*, 664 P.2d 673, 678 (Ariz. App. 1983) (asking the police "who a good lawyer would be" held not an unequivocal invocation).

or who says that he cannot afford a lawyer,[40] or who says that she is sick of being hassled and wants to call a lawyer,[41] all should be naturally interpreted as implicit statements that the suspect is requesting a lawyer. In each of these cases, however, courts using the threshold-of-clarity standard have found these statements inadequate assertions of the right to counsel. This Court should reject this narrow "threshold of clarity" standard which arbitrarily denies constitutional protection to those who fail to use the right "magic words" in invoking their right to counsel.

B. Under the clarification standard, the police may still continue their questioning of the suspect in order to clarify the suspect's intent. In practice, however, the clarification standard has been interpreted to permit police comments and questions that actively dissuade suspects from invoking their constitutional rights.

The clarification standard appears to chart a middle course between the other two standards for judging ambiguous or hedged assertions of the right to counsel, instructing police to respond to less-than-crystal clear assertions of the right to counsel by asking questions designed to clarify the suspect's request. In contrast to the threshold-of-clarity standard, this approach does give some legal effect to ambiguous or equivocal assertions of the right to counsel. Specifically, under this standard,

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[40] *People v. Mandrachio*, 433 N.E.2d 1272 (N.Y. Ct. of App. 1981) (suspect's statement to the police that he could not afford a lawyer held not a valid invocation of his right to counsel).

[41] *People v. Johnson*, 436 N.Y.S.2d 486, 488 (N.Y. App. Div. 1981); *aff'd*, 434 N.E.2d 261 (N.Y. Ct. App. 1982), on remand on other issue, 453 N.Y.S.2d 537, later opinion 468 N.Y.S.2d 1017 (1982) (defendant who responded to police questioning by saying that "she was tired of being hassled by us, . . . that she was sick and tired of us bothering her and that she wanted to call a lawyer" had not adequately invoked her right to counsel).

hedged assertions of the right to counsel that would be accorded no significance under the threshold-of-clarity standard may be given legally operative effect under the clarification standard, limiting further police interrogation. Unlike the per se invocation rule which absolutely bars further police interrogation upon any assertion of the right to counsel, however, the clarification approach permits the police to continue the interrogative exchange with the suspect after a less-than-clear invocation of the right to counsel. The ensuing police questioning is, at least in theory, limited solely to questions designed to clarify the intent of the suspect as to whether he is asserting his Fifth Amendment right to the assistance of counsel in the interrogation setting.

On its face, the clarification standard appears to strike a balance between the desire of law enforcement to have a free hand in conducting interrogations and the need to guarantee that individuals in custody can meaningfully exercise their constitutional right to counsel. Unfortunately, however, the clarification standard is fraught with possibilities for misapplication, and for that reason should be rejected in favor of the bright-line per se standard.

In all too many cases, the police response to an ambiguous invocation by a suspect is to try to dissuade the suspect from exercising the right to counsel. Tactics used by the police to undermine assertions of the right to counsel range from suggesting that a lawyer is unnecessary at this time,[42] advising suspects that having counsel

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[42] *See, e.g., People v. Russo*, 196 Cal. Rptr. 466, 468 (1983) (police responded to equivocal invocation with, "If you didn't do this, you don't need a lawyer, you know."); *State v. Torres*, 412 S.E.2d 20, 23 (N.C. 1992) (suspect asked the interrogating sheriff whether she needed a lawyer, and was told "no, it [is] best right now to cooperate and tell the truth and that they had been friends for a long time").

would not be in their best interests,[43] telling them that the process of getting counsel is slow and cumbersome,[44] confronting them with the evidence against them in hopes that they would feel the need to respond,[45] or simply asking pointblank for their side of the story.[46]

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[43] *See, e.g., State v. Lampe*, 349 N.W.2d 677, 679-80 (Wisc. 1984) (prosecutor responded to suspect's equivocal invocation with, "Carol, an attorney will tell you at this point that you shouldn't say anything, and I can tell you that if you don't say anything, I am going to ask the next person to see if they will cooperate with us or not and they will get the benefit of the cooperation, so it's your choice."); *Thompson v. Wainwright*, 601 F.2d 768, 769-72 (5th Cir. 1979) (police responded to suspect's statement that he wanted to tell his story to a lawyer before talking to them by emphasizing that counsel would advise him not to talk to the police, which would not be in his best interests).

[44] *See, e.g., Hampel v. State*, 706 P.2d 1173, 1181-82 (Alas. Ct. App. 1985) (suspect who asked about getting a lawyer told by the police how complicated and inconvenient it would be to have counsel appointed).

[45] *See, e.g., Towne v. Dugger*, 899 F.2d 1104, 1107, *cert. denied*, 111 S.Ct. 536 (1990) (police responded to equivocal assertion of the right to counsel by accusing suspect of the crime and confronting him with damaging evidence against him); *State v. Moulds*, 673 P.2d 1074, 1081-83 (Id. App. 1983) (suspect who had just equivocally asserted his right to counsel confronted by the police with apparently incriminating evidence); *Smith v. Endell*, 860 F.2d 1528, 1529 (9th Cir. 1988) (suspect accused of a shooting asked, "Can I talk to a lawyer? At this point, I think maybe you're looking at me as a suspect, and I should talk to a lawyer. . . ." to which interrogating officer responded by discussing the suspect's motive to kill the victim).

[46] *See, e.g., State v. Doughty*, 472 N.W.2d 299, 301-033 (Minn. 1991) (police responded to an equivocal assertion of the right to counsel by saying, "I'm very interested in hearing your side of the story."); *People v. Alexander*, 261 N.W.2d 63, 64 (Minn.), *cert. denied*, 436 U.S. 958 (1977) (police responded to suspect's equivocal invocation with, "I told her I thought she should tell me

None of these responses are genuine attempts to clarify the suspects' intentions with respect to the exercise of the right to counsel. But such responses are inevitable given the inherent conflict of interest felt by the interrogating officer, who will want the interrogation to proceed to a productive discussion of the crime if at all possible, and who at the same time has the obligation under this standard to ascertain whether an ambiguous request for counsel is indeed intended to be an assertion of the right to counsel that will cut off further interrogation. The desire by the police to continue an interrogation is so powerful that it has sometimes resulted in denial of counsel even to those who clearly and unambiguously ask for it. As a federal Narcotics Task Force officer testified concerning his refusal to allow an interrogated suspect to contact counsel, "There's a lot of things in the past that have happened that are not in law enforcement's favor when we let defendants contact lawyers. It has compromised investigations severely." *United States v. Nordling*, 804 F.2d 1466, 1471 n.4. (9th Cir. 1986). Even when the law makes it absolutely clear that counsel must be provided, officers like the agent in *Nordling* are reluctant to do so. Giving police the green light to continue questioning the suspect as long as the questioning is "clarification" questioning and expecting the police questions to be a truly disinterested attempt to ascertain whether the suspect wants counsel flies in the face of experience and human nature. It is simply asking too much of police officers to expect them to confine their follow-up questions to clarification when it is abundantly

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what happened"). For a case using all of the tactics outlined here, see *Hampel v. State*, 706 P.2d 1173, 1181-82 (Alas. Ct. App. 1985) (suspect's inquiry about getting a lawyer answered by the police explaining how complicated and inconvenient the process would be, detailing all of the evidence against the suspect and touting the advantages of telling his side of the story to the police before they spoke to possible co-defendants).

clear that their professional interests will be thwarted if the suspect does in fact invoke the right to counsel.

Further, reviewing courts in jurisdictions adopting the clarification approach have exacerbated the problem of the police tendency to undermine assertions of counsel by judicially categorizing post-invocation police questioning of a suspect as proper "clarification" when that questioning is of dubious legitimacy. For example, in *State v. Robtoy*, 653 P.2d 284, 289-91 (Wash. 1982), the police responded to a suspect who said, "Maybe I should call a lawyer," by warning him, "Do you understand that once you say you want an attorney, you know, we have to stop talking. It's going to be difficult to change and go back and forth." Despite the obviousness of the interrogator's ploy to discourage the suspect from asserting his right to counsel, the reviewing court found this response to be proper "clarification." Because courts have approved such police attempts to dissuade suspects from asserting their rights as mere "clarification,"[47] the police are understandably encouraged to engage in more of this type of coercive "clarification" in future interrogations.

In a similar fashion, appellate courts have legitimized post-assertion clarifying interrogation by interpreting

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[47] *See, e.g., Nash v. Estelle*, 597 F.2d 513, 516-20 (5th Cir.), *cert. denied*, 444 U.S. 981 (1979) (approving as proper clarification, "Okay. I had hoped that we might talk about this, but if you want a lawyer appointed, then we are going to have to stop right now. . . . Well, I can talk about it with you and I would like to, but if you want a lawyer, well, I am going to have to hold off, I can't talk to you. It's your life."); *State v. Mada*, 812 P.2d 1107, 1108 (Ariz. App. 1991) (suspect twice told police "My attorney told me not to talk with you;" police response to suspect, "I told him that he had to knock this type of activity off, that sooner or later doing the things that he was doing was going to get him into a situation that he absolutely could not control. . . . The decision [to answer police questions] is yours. Your attorney cannot order you to be quiet. That decision is totally yours," approved as proper clarification).

fairly definite assertions of the right to counsel to be merely "equivocal," thus condoning follow-up clarifying questions by the police that would otherwise have rendered subsequent statements by the suspect inadmissible. Among the assertions of the right to counsel that have been found by reviewing courts to be merely "equivocal" are: "This is a lie. I'm calling an attorney;"[48] "If [I am] a suspect in a murder, [I] want to consult with a lawyer;"[49] "I believe gentlemen that if this is going to get into something deep where you're attempting to get me to incriminate myself then I should have an attorney present. If there is any questioning on that particular subject."[50] As long as post-invocation police questioning can be characterized as clarifying, many courts have gone to great lengths to classify the invocation as equivocal.[51]

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[48] *State v. Griffin*, 754 P.2d 965, 966-69 (Utah Ct. App. 1988).

[49] *State v. Robinson*, 427 N.W.2d 217, 221-23 (Minn. 1988).

[50] *State v. Lewis*, 645 P.2d 722, 726-27 (Wa. App. 1982). During the initial Miranda warnings, the suspect responded to being informed of his right to counsel with "We'll cross that bridge when we come to it," and to prosecuting investigator's statement, "Keeping these rights in mind, would you like to waive these rights and talk?" with "No. I'm not going to waive any rights, a a a [sic] I'll just wait until I know what's happening." Several questions about the crime were then asked, when a deputy prosecutor interrupted to say: "Let me interject something here, before you go forward since Mr. Lewis has indicated that he isn't sure whether or not he wants to waive his right to remain silent and right to the presence of an attorney, you might get some clarification on that," to which the suspect responded, "I believe gentlemen that if this is going to get into something deep where you're attempting to get me to incriminate myself then I should have an attorney present, If there is any questioning on that particular subject." Held, this was only an equivocal assertion of the right to counsel. *Id.* at 727.

[51] *See, e.g., State v. Anderson*, 553 A.2d 589, 593-95 (Conn. 1989) (suspect, confronted with damaging evidence against him by police, did not unequivocally invoke his right to counsel

When post-assertion questioning cannot be fairly characterized as merely "clarification," courts using the clarification standard may end up concluding that what seems to be an equivocal invocation was in fact not an invocation of any sort, equivocal or otherwise, thus relieving the police of the obligation to confine further interrogation to clarifying questions.[52] For example, in

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when he "indicate[d] that he better call his wife and lawyer"); *United States v. Gonzalez*, 833 F.2d 1464 (11th Cir. 1987) (suspect who told police that she had sought an attorney but it was too expensive to retain the attorney for assistance during the interrogation had only "ambiguously" requested counsel); *Sechrest v. State*, 705 P.2d 626, 629 (Nev. 1985) (suspect who told the police his lawyer had advised him to "keep his mouth shut" had at best only equivocallly invoked his rights); *Cheatham v. State*, 719 P.2d 612, 618 (Wyo. 1986) (suspect who answered police inquiry whether he would answer their questions with, "Well I don't care, I'd like to see a lawyer, too you know;" held to have only equivocallly invoked the right to counsel); *Long v. State*, 517 So.2d 664, 667 (Fla. 1987) (interpreting suspect's words "The complexion of things have sure changed since you came back into the room. I think I might need an attorney," as only an equivocal assertion of the right to counsel).

[52] Cases in which courts have found no invocation, whether equivocal or otherwise, include, *Kapocsi v. State*, 668 P.2d 1157, 1159-60 (Okla. Crim. App. 1983) ("I'm thinking I will need a lawyer" held not to be an invocation of the right to counsel); *Commonwealth v. Todd*, 563 N.E.2d 211, 213 (Mass. 1990) (suspect who "wondered aloud about the advisability of having a lawyer" did not invoke her right to counsel); *State v. Shifflett*, 508 A.2d 748, 758 (Conn. 1986) (suspect's discussion of his attorney's role in negotiating a "package deal" before he would talk about the crime, held not to be invocation of right to counsel); *State v. Summers*, 325 S.E.2d 419, 425-26 (Ga. 1984) (suspect's statement to the police that his wife had informed him to get a lawyer was not an assertion of the right to counsel); *State v. Lopez*, 822 P.2d 465, 469-70 (Ariz. 1991) (suspect's statement that "he shouldn't be talking to me and his attorney was out of town," not an invocation of the right to counsel); *State v. Mada*,

Daniel v. State, 644 P.2d 172, 177 (Wyo. 1982) the suspect told interrogating officer that he would "probably like to have an attorney present." After further discussion of the right to counsel, he explained his earlier request by saying to the police, "If it's necessary, that's because I just don't want to be taken advantage of or anything like that." Later, after being asked to sign a *Miranda* waiver form, the suspect reiterated his request, "May I still – if I can't afford a lawyer – may I still be appointed a lawyer?" Despite these repeated statements by the suspect indicating his desire for counsel, the reviewing court nevertheless found that he had not invoked his right to counsel at all. Likewise, in *State v. Campbell*, 367 N.W.2d 454, 458 (Minn. 1985), a suspect who said "If I'm going to be charged with murder, maybe I should talk to an attorney" was held not to have even equivocally asserted her right to counsel. Nor, according to the appellate court, did the defendant in *United States v. Ivy*, 929 F.2d 147, 152 (5th Cir. 1991), when he responded to the police asking him, "Who can you get dynamite from?" with "I'll tell you, let me talk to my lawyer before I answer that." Taken in context, these suspects' statements appear to be at least equivocal invocations of the right to counsel. The police

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812 P.2d 1107, 1108 (Ariz. App. 1991) (suspect twice telling police "My attorney told me not to talk with you," did not invoke his right to counsel); *State v. Bledsoe*, 658 P.2d 674, 676 (Wash. App. 1983) (suspect's statement to the police that his attorney had told him not to talk to the police about the case held to be no invocation of the right to counsel); *Wernert v. Arn*, 819 F.2d 613 (6th Cir. 1987) (suspect's statement to the custodial officer that her husband would telephone an attorney, and suspect's own unsuccessful attempts to reach an attorney by phone, were not an invocation of the right to counsel); *Massengale v. State*, 710 S.W.2d 594, 598 (Tex. Cr. App. 1984) (suspect who, in earshot of police, told his wife to retain a lawyer for him, did not invoke his right to counsel); *United States v. Gordon*, 655 F.2d 478 (2d Cir. 1981) (unsuccessful attempt to contact attorney was not a valid invocation of the right to counsel).

follow-up questioning in each case was apparently so patently beyond clarification, however, that only by refusing to recognize the invocations to be even equivocal could the appellate courts find later incriminating statements to be admissible evidence.

The clarification standard thus encourages appellate courts to indulge in tortured interpretations of invocations as "equivocal" and of police follow-up questioning as "clarification" in order to justify admitting into evidence the suspect's subsequent incriminating statements. In practice, then, the clarification approach frequently turns out to be scarcely more generous in its protection of individual rights than is the threshold-of-clarity standard.

C. The per se standard, treating all apparent invocations of the right to counsel as fully effective, gives identical constitutional protection to all individuals, regardless of the speech patterns they use.

Under the per se standard, apparent requests for counsel by an arrestee are considered to be effective invocations of the right to counsel, and pursuant to *Edwards*, police must cease all further interrogation.[53]

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[53] Cases applying this standard include: *State v. Furlough*, 797 S.W.2d 631, 638-39 (Tenn. Ct. App. 1990); *Hunt v. State*, 632 S.W.2d 640, 642 (Tex. Crim. App. 1982); *Ochoa v. State*, 573 S.W.2d 796, 800-01 (Tex. Cr. App. 1978); *People v. Hinds*, 201 Cal. Rptr. 104, 109 (Ct. App. 1984); *People v. Russo*, 196 Cal. Rptr. 466, 469 (1983); *People v. Duran*, 189 Cal. Rptr. 595, 599 (Ct. of App. 1983); *People v. Munoz*, 148 Cal. Rptr. 165, 166 (Ct. App. 1978); *People v. Superior Court of Mono County* (*ex rel.* Zolnay), 125 Cal. Rptr. 798, 802-03, 542 P. 2d 1390, 1394-95 (1975), *cert. denied*, 429 U.S. 816 (1976); *Maglio v. Jago*, 580 F.2d 202, 205 (6th Cir. 1978); *People v. Plyler*, 272 N.W.2d 623, 625-26 (Mich. 1978); *People v. Cerezo*, 635 P.2d 197, 198 (Colo. 1981); *People v. Traubert*, 608 P.2d 342, 346 (Colo. 1980); *State v. Blakney*, 605 P.2d 1093, 1097 (Mont.

Whereas the threshold-of-clarity rule requires courts to construe any arguable lack of clarity or precision on the part of the suspect against finding an effective invocation of the right to counsel, this approach instructs the reviewing court to interpret any cognizable request for counsel by a suspect, regardless of its linguistic form, as a fully effective invocation of the Fifth Amendment right. The per se invocation rule thus gives legal effect to a much broader spectrum of speech patterns expressing a desire for counsel than do the threshold-of-clarity and clarification standards. There is no justification for making the scope of an individual's constitutional rights arbitrarily turn upon whether he used the right "magic words" in invoking his rights. But there is even less reason to adopt such a rule when its application will work to the disadvantage of discrete groups within the population such as women and ethnic minorities, who are least apt to frame their requests for counsel in the direct and assertive language favored by the threshold-of-clarity and clarification standards. Adopting the per se standard for judging the adequacy of invocations will ensure that all persons receive the same level of constitutional protections irrespective of the speech patterns that they happen to employ to express themselves.

V. The Bright Line Per Se Standard Requiring the Police to Respect All Invocations Gives the Best Guidance to Police and Reviewing Courts in Consistent Application of the Right to Counsel to All Individuals.

Under the per se standard, all apparent invocations of counsel automatically trigger the *Edwards* rule, and so provide the interrogating police with a simple rule governing interrogation procedures. In contrast, under either the threshold-of-clarity or the clarification standards, the

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1979); *State v. Elmore*, 500 A.2d 1089, 1092 (N.J. 1985); *United States v. Porter*, 764 F.2d 1, 6 (1st Cir. 1985).

police must make a case-by-case assessment of whether a particular suspect's request for counsel is ambiguous or equivocal, because the legal consequences of continued interrogation will turn on this initial determination. If the police incorrectly characterize the suspect's invocation, then continuation of the interrogation will be unconstitutional. Moreover, under the clarification standard, not only must the police first decide whether the invocation is sufficiently ambiguous to justify continued questioning, but they must also then limit their further interaction with the suspect to questions designed to clarify his intent.

Standards that require case-by-case factual assessments invariably result in more extensive adjudication than simpler bright line rules. In addition, such standards entail a risk that the factual assessments of various courts will result in inconsistent treatment of similarly situated individuals. As the cases discussed in this brief demonstrate, both the police and subsequent reviewing courts in jurisdictions using the threshold-of-clarity and clarification standards have been proven to be inconsistent in making these case-by-case determinations as to whether a particular invocation was ambiguous and as to whether further police questioning was appropriately limited. This Court adopted the bright line rules in *Miranda* and *Edwards* precisely to avoid such slippery factual determinations and the potential for inconsistent applications that they entail. *Amicus curiae* urges this Court to again adopt a bright line rule giving operative legal effect to all apparent invocations of the right to counsel in order to promote uniformity in the scope of protection that the Fifth Amendment accords to individuals in police custody, and certainty as to the boundaries of constitutional behavior for the future guidance of the police and of reviewing courts.

CONCLUSION

Amicus strongly recommends that this Court adopt the per se standard giving full legal effect to all cognizable requests for counsel by those undergoing custodial interrogation. By refusing to give full legal effect to invocations of *Miranda* rights unless they are framed in direct and assertive language, the threshold-of-clarity and clarification standards fail to validate the exercise of constitutional rights by those whose speech patterns differ from the linguistic norm. Those whose attempted invocations of their right to counsel are framed in a softer and less emphatic manner should not receive less favorable treatment under the law than those who express themselves in a direct and assertive way. This Court should hold that the degree of constitutional protection accorded to individuals does not depend upon their manner of speaking.

Only the per se rule, treating all cognizable requests for counsel as valid invocations of the right to counsel, would provide assertive and deferential suspects with equivalent legal protection from police interrogation procedures. For this reason, *amicus curiae* urges this Court to adopt the bright line rule that all requests for counsel, whatever the speech register in which they are framed, trigger the *Edwards* rule prohibiting further police-initiated interrogation until counsel has been provided.

Respectfully submitted,

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